

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MISSOURI
EASTERN DIVISION

0762

40532224

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Superfund

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMSTED INDUSTRIES, INC.,
et al.,

Defendants.

Civil Action No. ____

0400

1/8/13

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, seeking injunctive relief regarding cleanup of the Missouri Electric Works ("MEW") Superfund Site ("Site") and recovery of response costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Site.

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

C. The response action at the Site has been divided into three components or "operable units." In July 1990, a Remedial Investigation and Feasibility Study ("RI/FS") was performed by several Potentially Responsible Parties ("PRPs") pursuant to an Administrative Order on Consent ("AOC"). Based on the results of the RI/FS, EPA issued a Record of Decision ("ROD") in September 1990, calling for the excavation and treatment of PCB-contaminated soil at the Site ("Operable Unit 1" or "OU1"). The OU1 soil remedy was completed by a group of PRPs pursuant to a Consent Decree ("CD") in July 2000. In conjunction with the RI/FS, the PRPs also performed a groundwater design investigation to characterize the rate and extent of contamination in the groundwater at the Site. The groundwater design investigation was

completed in 2005. On September 28, 2005, EPA issued a ROD which presented EPA's selection of a groundwater remedy ("Operable Unit 2" or "OU2"). The third component of the remedy for the Site, ("Operable Unit 3" or "OU3"), will address PCB contamination that has migrated from the MEW Site to a nearby wetland area. EPA will issue a ROD documenting the remedy selected for OU3 after an RI/FS for OU3 has been conducted.

D. EPA has determined the following:

1. prompt settlement with the *De Minimis* Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

2. the payment to be made by the *De Minimis* Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by other persons is \$11,405,722; and

3. the amount of hazardous substances contributed to the Site by the *De Minimis* Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the *De Minimis* Settling Defendant is minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is because the amount of hazardous substances contributed to the Site by the *De Minimis* Settling Defendant does not exceed seven tenths of one percent (0.7%) of the hazardous substances at the Site, and the hazardous substances contributed by the *De Minimis* Settling Defendant to the Site is not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

E. In accordance with Section 122(g)(7) of CERCLA, EPA has reviewed the Financial Information submitted by *De Minimis* Settling Defendant to determine whether it has an inability or a limited ability to pay response costs incurred and to be incurred at the Site, taking into consideration the ability of the *De Minimis* Settling Defendant to pay response costs and still maintain its basic business operations, including its overall financial condition and demonstrable constraints on its ability to raise revenues. Based upon this Financial Information, EPA has determined that the *De Minimis* Settling Defendant qualifies for an alternative payment method within the meaning of Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7), and is able to make the payments specified in Section VI (Payment).

F. The *De Minimis* Settling Defendant does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

G. The United States and the *De Minimis* Settling Defendant agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to the *De Minimis* Settling Defendant.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b), and also has personal jurisdiction over the *De Minimis* Settling Defendant. The *De Minimis* Settling Defendant consents to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon the *De Minimis* Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status of the *De Minimis* Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter the *De Minimis* Settling Defendant's responsibilities under this Consent Decree.

IV. STATEMENT OF PURPOSE

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows the *De Minimis* Settling Defendant to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating the potentially responsible party from further involvement at the Site; and

c. to obtain settlement with the *De Minimis* Settling Defendant for its fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other persons, and to provide for full and complete contribution protection for the *De Minimis* Settling Defendant with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" or "Decree" shall mean this Consent Decree.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.
- e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- f. "Financial Information" shall mean those financial documents identified in Appendix B.
- g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- i. "Parties" shall mean the United States and the *De Minimis* Settling Defendant.
- j. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).
- k. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- l. "*De Minimis* Settling Defendant" shall mean Independent Electric Machinery.
- m. "Site" shall mean the Missouri Electric Works ("MEW") property, encompassing approximately 6.4 acres, located at 824 South Kingshighway, in Cape Girardeau, Missouri, and shall include all areas to which Waste Material released from the MEW property has migrated or come to be located and all areas in proximity to such contamination that are necessary for implementation of the Work.
- n. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

VI. PAYMENT

5. The *De Minimis* Settling Defendant shall pay to the EPA Hazardous Substance Superfund the principal sum of \$113,757.00, plus an additional sum for Interest as explained below. Payment shall be made in yearly installments. Each installment, except for the first, on which no interest is due, shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the date of entry of this Consent Decree. The first payment of \$38,538.20 shall be due on December 1, 2013. Subsequent payments of \$38,538.20 shall be made on each anniversary date of the first payment for the succeeding two (2) years. *De Minimis* Settling Defendant may accelerate these payments, and Interest due on the accelerated payments shall be reduced accordingly.

6. The *De Minimis* Settling Defendant's payment includes an amount for: a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and c) a premium to cover certain risks and uncertainties associated with this settlement.

7. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to Department of Justice's account in accordance with current EFT procedures, referencing USAO File Number , the EPA Region and Site Spill ID Number 076R, and DOJ Case Number 90-11-2-614/2. Payment shall be made in accordance with instructions provided in writing to De Minimis Settling Defendant by the Financial Litigation United of the U.S. Attorney's Office in the Eastern District of Missouri following lodging of this Consent Decree. Any payments received by the DOJ after 4:00 p.m. Eastern Time shall be credited on the next business day. At the time of payment, De Minimis Settling Defendant shall send notice that their payment has been made to DOJ and EPA, at:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
DJ No. 90-11-2-614/2
P.O. Box 7611
Washington, D.C. 20044-7611

EPA Regional Financial Management Officer
Mail Code PLMG/RFMB/FMSS
EPA Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

The total amount of to be paid by the De Minimis Settling Defendant pursuant to Paragraph 5 shall be deposited by EPA into the Missouri Electric Works Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO MAKE PAYMENT

8. **Interest on Late Payments.** If the *De Minimis* Settling Defendant fails to make any payment under Paragraph 5 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received. In addition, if the *De Minimis* Settling Defendant fails to make a full payment within the time required by Paragraph 5 of this Consent Decree, the United States may, in addition to any other available remedies or sanctions, bring an action against the *De Minimis* Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l), for failure to make timely payment.

VIII. CERTIFICATION OF DE MINIMIS SETTLING DEFENDANT

9. By signing this Consent Decree, the *De Minimis* Settling Defendant certifies that, to the best of its knowledge and belief, it:

a. has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

De Minimis Settling Defendant further certifies that it has submitted Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time *De Minimis* Settling Defendant executes this Consent Decree.

IX. COVENANT NOT TO SUE BY UNITED STATES

10. In consideration of the payment that will be made by the *De Minimis* Settling Defendant under the terms of this Consent Decree, and except as specifically provided in Section X (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against the *De Minimis* Settling Defendant pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt of the *De Minimis* Settling

Defendant's first payment as required by Section VI of this Consent Decree. This covenant not to sue is conditioned upon: a) the satisfactory performance by *De Minimis* Settling Defendant of all obligations under this Consent Decree, including, but not limited to, payment of all amounts due under Section VI (Payment); and b) the veracity of the information provided to EPA by *De Minimis* Settling Defendant relating to *De Minimis* Settling Defendant's involvement with the Site. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by *De Minimis* Settling Defendant. If the Financial Information submitted by *De Minimis* Settling Defendant is subsequently determined by EPA to be false, or, in any material respect, inaccurate, *De Minimis* Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the contribution protection in Paragraph 18 of this Consent Decree shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from *De Minimis* Settling Defendant's false or materially inaccurate information. This covenant not to sue extends only to *De Minimis* Settling Defendants and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY UNITED STATES

11. The United States reserves, and this Consent Decree is without prejudice to, all rights against the *De Minimis* Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 10. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the *De Minimis* Settling Defendant with respect to:

- a. liability for the *De Minimis* Settling Defendant's failure to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or
- d. liability based upon the *De Minimis* Settling Defendant's ownership or operation of the Site, or upon the *De Minimis* Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree.

12. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against the *De Minimis* Settling Defendant in this action or in a new action or to issue an administrative order to the *De Minimis* Settling Defendant seeking to compel the *De Minimis* Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if:

a. information is discovered which indicates that such *De Minimis* Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such *De Minimis* Settling Defendant no longer qualifies as a *de minimis* party at the Site because the *De Minimis* Settling Defendant contributed greater than seven tenths of one percent (0.7%) of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site; or

b. the presence of PCBs in the alluvium together with any other relevant information indicates that the OU2 remedial response action is not protective of human health or the environment; or

c. *De Minimis* Settling Defendant selects payment Option A, and total response costs incurred or to be incurred at or in connection with the OU3 response action subsequently selected exceed \$11,800,000.

Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen proceedings against the *De Minimis* Settling Defendant in this action or in a new action or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by *De Minimis* Settling Defendant, or the financial certification made by *De Minimis* Settling Defendant is Section VIII of this Consent Decree is false or in any material respect, inaccurate.

XI. COVENANT NOT TO SUE BY DE MINIMIS SETTLING DEFENDANT

13. The *De Minimis* Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Missouri, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 15 and Paragraph 17, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 11 (c) or (d) or Paragraph 12, but only to the extent that the

De Minimis Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

14. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

15. The *De Minimis* Settling Defendant agrees not to assert any claims or causes of action (including claims for contribution under CERCLA) that it may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that the *De Minimis* Settling Defendant may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against the *De Minimis* Settling Defendant.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

16. Except as provided in Paragraph 15 nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 15 the United States and the *De Minimis* Settling Defendant each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

17. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, the *De Minimis* Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 11.

18. The Parties agree, and by entering this Consent Decree this Court finds, that the *De Minimis* Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person.

XIII. RETENTION OF JURISDICTION

19. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION/APPENDICES

20. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached and incorporated into this Consent Decree:

“Appendix A” is the description of the “De Minimis Settlement Payment Options.”

“Appendix B” is the list of financial documents submitted to EPA by De Minimis Settling Defendant.

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

21. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper or inadequate. The *De Minimis* Settling Defendant consents to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

XVI. EFFECTIVE DATE

22. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraph 21.

XVII. SIGNATORIES/SERVICE

23. The undersigned representative of the *De Minimis* Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or his delegate, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.

24. The *De Minimis* Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the *De Minimis* Settling Defendant in writing that it no longer supports entry of the Consent Decree.

25. The *De Minimis* Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of the *De Minimis* Settling Defendant with respect to all matters arising under or relating

to this Consent Decree. The *De Minimis* Settling Defendant hereby agrees to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court. The Parties agree the *De Minimis* Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

SO ORDERED THIS ____ DAY OF _____, 2013.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Amsted Industries, Inc, e. al.*, Civil Action No. _____, relating to the Missouri Electric Works Superfund Site, Cape Girardeau, Missouri:

FOR THE UNITED STATES OF AMERICA

Date: _____

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CECILIA TAPIA

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BARBARA L. PETERSON

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U.S. Environmental Protection Agency, Region 7

11201 Renner Boulevard

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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Amsted Industries, Inc., et. al.*, Civil Action No. _____, relating to the Missouri Electric Works Superfund Site, Cape Girardeau, Missouri.

FOR *DE MINIMIS* SETTling DEFENDANT
INDEPENDENT ELECTRIC MACHINERY

Date: 1-8-13

David Launder
Representative's Signature

DAVID LAUNDER
Representative's Name

PRESIDENT
Representative's Title

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

De Minimis Settling Defendant eligible to participate in this settlement must select one of the following options:

_____ I wish to participate as a *De Minimis* Settling Defendant under Option A as set forth in Attachment A to this Consent Decree.

X I wish to participate as a *De Minimis* Settling Defendant under Option B as set forth in Attachment A to this Consent Decree.

Appendix A
Independent Electric Machinery
***De Minimis* Settlement Payment Options**

Option A

The *De Minimis* Settling Defendant agrees to pay \$90,662. The settlement payment includes an amount for the *De Minimis* Settling Defendant's share (0.0028) of: a) EPA's past response costs incurred at or in connection with the Site (\$56,297); b) projected future response costs to be incurred at the Site by the EPA Hazardous Substance Superfund, or by any other person (\$11,405,722); and c) a 100% premium to cover the risks and uncertainties associated with this settlement, including the risk that total response costs incurred or to be incurred at or in connection with the OU2 response action will exceed the estimated response costs upon which this payment is based, but not including the risk that PCBs may migrate to the alluvial aquifer at the Site; or the risk that the total response costs incurred or to be incurred at or in connection with the OU3 response action subsequently selected exceed \$11,800,000.

Option B

The *De Minimis* Settling Defendant agrees to pay \$113,757. The settlement payment includes an amount for the *De Minimis* Settling Defendant's share (0.0028) of: a) EPA's past response costs incurred at or in connection with the Site (\$56,297); b) projected future response costs to be incurred at the Site by the EPA Hazardous Substance Superfund, or by any other person (\$11,405,722); and c) a 150% premium to cover the risks and uncertainties associated with this settlement, including the risk that total response costs incurred or to be incurred at or in connection with the OU2 and OU3 response actions will exceed the estimated response costs upon which this payment is based, not including the risk that PCBs may migrate to the alluvial aquifer at the Site.

Appendix B

Independent Electric Machinery Financial Information Supporting Ability To Pay Claim

- Financial Statement dated September 11, 2011, and certified by James J. Kobilarcsik, Secretary, Independent Electric Machinery